

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MORRIS WEATHERSPOON,

Plaintiff,

Case No. 1:14-cv-707

v

HON. JANET T. NEFF

JAY CHOI, et al.,

Defendants.

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**OPINION AND ORDER**

In July 2014, pursuant to 42 U.S.C. § 1983, Plaintiff filed this prisoner civil rights action against numerous identified and unidentified individuals. On March 20, 2015, this Court dismissed all of Plaintiff's claims save the following: (1) Eighth and Fourteenth Amendment claims against Defendants Choi, Caler, Castor, Lorentz, Santiago, Busman, Enz, Johnson, Wood, Desjarden, Oetman, Heard, McAuliffe (a/k/a Lean), Johnston, Perez and Miller "arising from the mental health panel proceedings that resulted in a finding of mental illness and the resulting forced medication;" and (2) an Eighth Amendment claim against Defendant Huyge "for denial of medical treatment for Plaintiff's abscessed femur" (Op. & Order, Dkts 13 & 14). Defendant Huyge subsequently filed a motion for summary judgment (Dkt 69), which was referred to the Magistrate Judge. The Magistrate Judge issued a Report and Recommendation (R&R, Dkt 88), recommending that Defendant Huyge's motion be granted. Defendants Choi and Santiago (Dkt 55) and the remaining "MDOC Defendants" (Dkt 45) moved for summary judgment on the ground that Plaintiff failed to exhaust his administrative remedies. The motions were referred to the Magistrate Judge, who issued a Report

and Recommendation (R&R, Dkt 89), recommending that both motions be denied. The matter is presently before the Court on the parties' objections to the Reports and Recommendations. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Reports and Recommendations to which objections have been made. The Court denies the objections and issues this Opinion and Order.

### **I. Objection to Report and Recommendation (Dkt 88)**

In recommending that this Court grant Defendant Huyge's dispositive motion, the Magistrate Judge determined that neither Plaintiff's disagreement with the course of treatment he received from Defendant Huyge nor Plaintiff's belief that such constituted negligent care implicates the Eighth Amendment (R&R, Dkt 88 at PageID.597). In his objection (Dkt 97 at PageID.654), as supplemented (Dkts 99 & 103), Plaintiff reasserts his dissatisfaction with the medical treatment he has received and asserts that genuine issues of material fact preclude entry of summary judgment in Defendant Huyge's favor. Plaintiff does not address, let alone demonstrate any error in, the Magistrate Judge's Eighth Amendment analysis. Accordingly, the Court denies Plaintiff's objection and adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Because Plaintiff filed this action *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

### **II. Objections to Report and Recommendation (Dkt 89)**

In recommending that this Court deny the motions for summary judgment filed by the remaining Defendants, the Magistrate Judge determined that the motions failed for two reasons: (1)

Defendants submitted copies of MDOC Prisoner Step III Grievance Reports without explaining how the reports support their positions; and (2) Plaintiff responded to the motions by presenting evidence that, if believed, establishes that Plaintiff did, in fact, exhaust all *available* administrative remedies by requesting grievance forms that prison officials refused to provide (R&R, Dkt 89 at PageID.606-607 [emphasis in original]).

In their objection, the MDOC Defendants assert that their motion brief provided a “clear roadmap for reading the grievance report and why it demonstrated lack of exhaustion,” specifically, that the grievance report shows that no grievances were filed during the relevant time period—April through June 2013 (Defs. Obj., Dkt 90 at PageID.609-610). The MDOC Defendants also point out that Plaintiff did not provide evidence that he requested grievance forms during the relevant time period, only that he did so much later (*id.* at PageID.611). Similarly, Drs. Choi and Santiago assert that Plaintiff did not timely file grievances related to their examination, determination and recommendations for treatment stemming from the May 7, 2013 mental health hearing and that they are “unable to produce a document which does not exist” (Defs. Obj., Dkt 91 at PageID.619, 622).

Defendants’ arguments fail to demonstrate any factual or legal error in the Magistrate Judge’s exhaustion analysis or her ultimate conclusion that Defendants have not satisfied their burden to establish that Plaintiff exhausted all *available* administrative remedies. *See Ross v. Blake*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 1850 (2016) (holding that a prisoner need not exhaust remedies if they are not “available”). Defendants’ assertion that Plaintiff may have requested grievance forms after the relevant time period does not establish proper exhaustion, which, as the Magistrate Judge set forth, is defined as “compliance with an agency’s deadlines and other critical procedural rules” (R&R, Dkt 89 at PageID.605, quoting *Woodford v. Ngo*, 548 U.S. 81, 90-93 (2006)). Accordingly, this Court

denies the objections and adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Therefore:

**IT IS HEREBY ORDERED** that Plaintiff's Motion to Supplement his Objection (Dkt 104) is GRANTED.

**IT IS FURTHER ORDERED** that the Objection (Dkt 97), as supplemented (Dkts 99 & 103), is DENIED and the Report and Recommendation of the Magistrate Judge (Dkt 88) is APPROVED and ADOPTED as the Opinion of the Court.

**IT IS FURTHER ORDERED** that Defendant Huyge's Motion for Summary Judgment (Dkt 69) is GRANTED for the reasons stated in the Report and Recommendation (Dkt 88).

**IT IS FURTHER ORDERED** that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of the decision would not be taken in good faith.

**IT IS FURTHER ORDERED** that Defendants' Objections (Dkts 90 & 91) are DENIED and the Report and Recommendation of the Magistrate Judge (Dkt 89) is APPROVED and ADOPTED as the Opinion of the Court.

**IT IS FURTHER ORDERED** that Defendants' Motions for Summary Judgment (Dkts 45 & 55) are DENIED for the reasons stated in the Report and Recommendation (Dkt 89).

Dated: July 28, 2016

/s/ Janet T. Neff  
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JANET T. NEFF  
United States District Judge